IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-04-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.14159 OF 2000

T. Pedda Penciliah,
S/o. Penciliah .. Petitioner

Vs.

1. The Managing Director,
   Metro Water and Sewerage Board,
   No.1, Pumping Station Road,
   Chindadaripet,
   Chennai 600 002.

2. The General Manager,
   Metro Water and Sewerage Board,
   No.1, Pumping Station Road,
   Chindadaripet,
   Chennai 600 002.

3. Board of Directors,
   Metro Water and Sewerage Board,
   No.1, Pumping Station Road,
   Chindadaripet,
   Chennai 600 002.

   R-3 impleaded as per order of
   this Court dt.11.2.2004 in
   WPMP.No.1772 of 2004. .. Respondents

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Petition filed under Article 226 of the Constitution of India for issuance of Certiorarified Mandamus calling for records from the 1st and 2nd respondents pertaining to the proceeding No.CMWSSB/P & A/VC 3/43371/98 dated 1.7.1999 and the final proceeding No.CMWSSB/P & A/VC 2/40366/99 dated 29.11.1999 and quash the same and reinstate the petitioner in service with all attendant benefits and backwages.

For Petitioner : Mr. Balan Haridas

For Respondents : Mr.B. Shanthakumar

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J U D G M E N T

The facts giving rise to the present writ petition are as follows :-

Petitioner was working as Revenue Collector / Depot Manager, Division 126, Area III under the Chennai Metropolitan Water Supply and Sewerage Board, since July, 1996. On 3.3.1997, a complaint was received from one V.Gunasekaran alleging that the petitioner threatening that he would change the domestic tariff as commercial until bribe amount demanded by the petitioner was paid by such complainant. At that stage, a Special Deputy Collector (Taxes) inspected the premises and reported that out of 21 flats, in one flat the office of such complainant was located, who was only paying domestic tariff. It was reported by him that the petitioner failed to bring the aforesaid fact to the notice of the office and had demanded bribe of Rs.10,000/- to suppress the nature of use. On the basis of such complaint and the report of the Special Deputy Collector (Taxes), three charges were framed against the petitioner on 31.8.1998. The charges are to the following effect :-

"Charges:

(1) that Thiru T. Pedda Penciliah, Revenue Collector (now Depot Manager) having known the fact that premises No,.3/9, Lakshmikanthan Street, T. Nagar, Chennai 17 is necessarily brought under commercial category since the owner of the premises is running his Office under the caption "VGS Builders Pvt. Ltd" at the above premises, demanded bribe of Rs.10,000/- to suppress the fact that amounts to misconduct under Regulation 6(29) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

(2) that Thiru T. Pedda Penciliah, Revenue Collector has made unauthorised corrections of tariff in the first page of the Metrowater card of the said premises as commercial category very recently and the amount to the remitted as Rs.375/- per quarter on his own accord without attestation by authorised Officer amounts to misconduct under Regulation 6(23) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978.

(3) that Thiru T. Pedda Penciliah, Revenue Collector having known the fact of commercial occupation in the said premises has not intimated the fact to higher authorities at once and thereby it amounts to misconduct under Regulation 6(37) of CMWSS Board Employees (Discipline and Appeal) Regulations, 1978."

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The present petitioner in his explanation dated 23.9.1998 denied the allegation regarding demand of bribe and on the other hand he explained that when the petitioner discovered that the complainant was using the flat as a commercial venture but was only paying domestic tariff, a correction in the Metrowater consumer card was made by the petitioner and since the complainant did not handover such card to be produced before the office, necessary correction in the office could not be effected. It was further explained by the petitioner that in fact the consumer offered bribe to suppress the aforesaid fact, but the petitioner refused and, therefore, a false complaint had been made. It was further indicated by the petitioner that as per the oral instructions of the superior officers such correction in the card can be made by the Revenue Collectors. It was further indicated that the petitioner had brought to the notice of the office such aspect by his proposal dated 6.5.1997. On such denial of the charges, a Special Deputy Collector (Taxes) was appointed as the Enquiry Officer, who conducted enquiry on 19.1.1999, submitted his report on 22.1.1999 holding that the charges had been established. In such report, it was indicated that the delinquent officer had informed the area office on 6.5.1997 only after learning that a complaint had been received by the Head Office. It was further indicated that correction had been made in the metrowater card without any authority. The findings of the enquiry officer were forwarded to the delinquent to enable him to make further representation. In his further reply, the delinquent reiterated that he had not demanded any bribe and because the delinquent refused to help the consumer, the allegation had been made out of malice. In respect of the finding relating to Charge No.2 it was indicated that as per the oral instructions given to the Depot Managers by the superior officers correction in the consumer card had been made which practice was prevalent in every division and there was no malafide motive. Regarding the finding relating to Charge No.3, it was indicated that he had brought to the notice of the office regarding the change of category to be effected and since on the basis of such report the consumer was subsequently paying at commercial rate, extra revenue had been generated for the Board.

After going through the findings of the enquiry officer and the subsequent reply of the delinquent, the Managing Director did not accept the explanation filed by the delinquent and decided in consultation with the Employment Committee to impose punishment of compulsory retirement. An appeal was filed by the petitioner, which was rejected by the Board on 29.11.1999. Such orders of the Board compulsorily retiring the petitioner have been challenged in the present writ petition.

2. Learned counsel appearing for the petitioner has

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submitted that the main allegation against the petitioner relates to alleged demand of bribe as indicated in Charge No.1 and such charge has not at all been proved against the petitioner and the conclusion of the Enquiry Officer, which has been accepted by the disciplinary authority and the appellate authority that such Charge No.1 had been established, is based on no evidence. In this connection, it is further submitted that the complainant V.Gunasekaran, on whose complaint the proceedings had been initiated, was never examined as a witness and even a copy of the complaint filed by such V.Gunasekaran was never served on the petitioner. Since there is no evidence in support of such main allegation, the other two allegations, which are very minor in nature, are of no consequence. It is further submitted that even assuming that the allegations are true, the punishment of compulsory retirement is grossly disproportionate. It is further submitted that if the first charge is held to be disproved, the other charges cannot be held to be sufficient to uphold the punishment of compulsory retirement.

3. Learned counsel appearing for the respondents has supported the orders passed by the disciplinary authority and the appellate authority. He has submitted that even though the complainant was not examined, from the surrounding circumstances, the enquiry officer came to the conclusion that there was demand of bribe. It has been submitted by him that even though the petitioner had made the correction in the first page of the metrowater tariff card, no such permission had been obtained from the departmental authorities to make such unilateral correction and no corresponding entry had been made in the official records. Moreover, the fact that the tariff should be on the basis of commercial use and not on domestic use even though known to the delinquent, was not brought to the notice of the Board for a long period and only after a complaint was received from the complainant, a report was submitted by the delinquent with the obvious intention to extricate himself from the sticky situation.

4. The report of the enquiry officer is on record. The report of the enquiry officer relating to Charge No.1 holding that the delinquent officer was guilty of such charge is apparently based on the following circumstances, namely, a complaint had been made, correction had been made in the metro water card in respect of the concerned premises without obtaining any orders from the higher authorities and the fact that the complainant was using the premises as a commercial office was not brought to the notice of the office for a long period. The enquiry officer also relied upon the report of the former Special Deputy Collector, wherein it was indicated that bribe has been demanded.

5. It is unfortunate that the Department never thought it fit to examine the complainant nor thought it fit to give

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opportunity to the petitioner to cross-examine such complainant. As a matter of fact, even a copy of the complaint had not been made available. Merely from the fact that the petitioner had corrected the metro water card and had not brought to the notice of the office, it cannot be concluded that the petitioner had demanded bribe. It is of course true that the High Court while deciding the matter under Article 226 of the Constitution, does not sit as an appellate authority over the conclusions arrived at by the disciplinary authority or the enquiry officer. However, where the court finds that the conclusion is based on no evidence, the court can interfere with such finding.

6. In my considered opinion, in the present case, the conclusion of the enquiry officer and the disciplinary authority to the effect that bribe has been demanded is practically based on no evidence. Such a conclusion, therefore, relating to Charge No.1, cannot be accepted.

7. The findings relating to Charge Nos.2 and 3, however, stand on different footing. Undisputedly the metro water card had been corrected by the petitioner, but no corresponding correction had been made in the official records. Similarly the delinquent had not reported about the fact that there were many commercial consumers for a long period is apparent from the materials on record. The delinquent had taken the plea that such corrections are made on the basis of the oral instructions received from the superior officers, but this aspect has not been accepted. In the absence of any material produced by the petitioner to support his stand, it cannot be said that such conclusion relating to Charge No.2 is perverse.

8. In respect of Charge No.3, the delinquent had given the explanation that he had brought it to the notice of the higher authority, but the enquiry officer rightly concluded that such aspect was not brought to the notice of the higher authority till 6.5.1997. This conclusion also cannot be said to be unreasonable warranting any interference.

9. In view of the above discussion, it is apparent that even though it cannot be said that Charge No.1 relating to demand of bribe has been proved, the findings of the concerned authority that Charge Nos.2 and 3 are proved do not require any interference.

10. In view of the above conclusion, the next question is whether the punishment of compulsory retirement can be sustained. There is no doubt that Charge No.1 was the more serious charge. Since the finding relating to Charge No.1 is not acceptable, the question now to be decided is whether the punishment can be sustained on the basis of Charge Nos.2 and 3. In the facts and

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circumstances of the case, it would not be proper for this Court to consider this aspect. On the other hand, it would be more appropriate to remand the matter to the disciplinary authority to consider the question of appropriate punishment to be imposed on the footing that Charge Nos.2 and 3 have been proved.

11. For the aforesaid reasons, the matter is remitted to the disciplinary authority to consider afresh the question of punishment to be imposed on the footing that Charge Nos.2 and 3 had been proved. This may be done within a period of six weeks from the date of receipt of the present order. It goes without saying that if the petitioner is aggrieved by any subsequent order of punishment imposed by the disciplinary authority, it would be open to the petitioner to pursue his legal remedy as contemplated in law. The writ petition is accordingly disposed of, subject to the aforesaid observations and directions. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpk
To

1. The Managing Director,
   Metro Water and Sewerage Board,
   No.1, Pumping Station Road,
   Chindadaripet, Chennai 600 002.

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+1cc to Mr.Balan Haridas, Advocate Sr 20474

RSN (CO)
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